

COMMITTEE ON BILLS ON SECOND READING

September 25, 2006

7:00 PM

Chairman Duval called the meeting to order.

The Clerk called the roll.

Present: Aldermen Duval, Lopez, Garrity, Pinard

Absent: Alderman Gatsas

Messrs.: V. Lamberton, R. MacKenzie, T. Bowen, V. McHugh, M. Christie,
P. Porter, C. Harris

Chairman Duval addressed Item 3 of the agenda:

Ordinances:

“Authorizing the Mayor to dispose of certain tax deeded property located at Map 713, Lot 1, known as land on Brown Avenue.”

“Authorizing the Mayor to dispose of certain tax deeded property located at Map 866, Lot 6, (consolidated from former 141 Broadhead and 142 through 145/half of this parcel) known as land on Brown Avenue.”

On motion of Alderman Garrity, duly seconded by Alderman Pinard, it was voted that the ordinances ought to pass.

Chairman Duval addressed Item 4 of the agenda:

Ordinances:

“Amending Sections 33.024, 33.025, & 33.026 (Systems/ Programming Manager-Systems/Development Manager, Computer Programmer-Applications Developer/Analyst) of the Code of Ordinances of the City of Manchester.”

“Amending Sections 33.024, 33.025, & 33.026 (Senior Applications Developer/Analyst) of the Code of Ordinances of the City of Manchester.”

Alderman Lopez moved the item for discussion. Alderman Garrity duly seconded the motion.

Alderman Garrity stated I have a question on the Computer Programmer and the reason for the upgrade.

Virginia Lamberton, Human Resources Director, stated essentially what I started to do well over a year ago was go through all of the departments and update the class specifications to keep them up-to-date with the current duties and responsibilities and the current language that is used in the profession. That was to avoid having another major study done to the tune of hundreds of thousands of dollars. Information Technology, as you know, is a moving target in our world. This one particular position was outdated in the language in the class specification. It was outdated in the title. Due to the type of work that the position does, it definitely impacted on the point assignment and consequently when we finished analyzing it and comparing it to other jobs it came out one grade higher.

Alderman Lopez moved that the ordinances ought to pass. Alderman Garrity duly seconded the motion. Chairman Duval called for a vote. There being none opposed, the motion carried.

Chairman Duval addressed Item 5 of the agenda:

Ordinances:

Amending Section 33.054 (B) (2) (Overtime Compensation/Comp Time) of the Code of Ordinances of the City of Manchester.”

“Amending Section 33.076 (A), Special Leave of the Code of Ordinances of the City of Manchester.”

“Amending Section 33.080 (A) (1) Military Service, of the Code of Ordinances of the City of Manchester.”

“Amending Section 33.062 (D), Part-Time Employees, of the Code of Ordinances of the City of Manchester.”

Alderman Lopez stated in reference to compensation, am I understanding in reading this correctly that compensation time must be used prior to terminating an

employee's employment. So they can accumulate quite a bit of time. Am I reading this properly?

Ms. Lamberton responded if funds are not available to pay for overtime then the department would allow the employee, if they had a need because we all have peaks and valleys, but if they had a need for somebody to work additional hours they would be able to accrue compensatory time to a maximum amount. However, they would have to utilize that time prior to termination of employment with the City.

Alderman Lopez asked can you mandate an employee to take compensatory time versus paying them by labor laws.

Ms. Lamberton answered yes for public employees.

Alderman Lopez asked for public employees you can tell an employee I don't have any money to pay you but I am going to give you time and you have to work.

Ms. Lamberton answered yes. Compensatory time is compensation. That was actually a lawsuit that happened in Texas in the 80's. I think it was Garcia vs. the State of Texas. It was a probation parole officer and it just snowballed and it basically allowed for compensatory time to be paid and then the U.S. Government went and passed laws that allowed for public employees to accrue all of this time – actually to a lot more than I am proposing here. I think it is 343 hours for non-exempt employees.

Alderman Lopez asked do we have a state law.

Ms. Lamberton answered federal law would override that.

Alderman Lopez asked so there is a federal law and it was shown to the HR Committee when they reviewed this.

Ms. Lamberton answered I don't recall if we talked about federal law or not.

Alderman Lopez stated my only concern is a person can cut the budget a little bit and say okay I owe you some time and you can pick it up whenever. Is that a possibility?

Ms. Lamberton responded could you repeat that.

Alderman Lopez asked if you cut your budget...let's say you don't have enough money in your salary line item and you say okay fine work a couple of extra weeks and I owe you a couple of extra weeks.

Ms. Lamberton answered well I don't think you would say it that way.

Alderman Lopez replied well basically.

Ms. Lamberton stated right now when people earn compensatory time it is typically because there aren't funds available...like in my budget I don't have any overtime. So if I have a need, a special project that I have to do, I cannot let my employees work unless I compensate them in some manner. I either have to give them cash or time.

Alderman Lopez responded I realize what you are saying but you are telling me that you can mandate them to do that.

Ms. Lamberton replied yes I can.

Alderman Lopez asked under federal law.

Ms. Lamberton answered yes I can as long as I provide them with compensation in money or time.

Alderman Lopez asked can you provide that federal law to me.

Ms. Lamberton answered I can try. It might take me a long time to get that for you. I am just familiar with it because that is what I do for a living.

Alderman Lopez responded I know that. I know what you do for a living. I am just concerned that a lot of department heads might utilize this and give a lot of people time off instead of paying them.

Ms. Lamberton replied I don't think so because most departments have money for overtime and a lot of the contracts don't even allow for that. The employees have to be paid until such time as funds are exhausted and then comp time would kick in. There are some times when it is an option for the employee. Do you want to get comp time or do you want to get paid? Probably a less senior employee who hasn't got a lot of vacation time might opt to have the compensatory time so he or she can take another day off down the road.

Alderman Lopez stated when I was on the HR Committee you will recall that there were a couple of employees that didn't want the comp time but wanted to get paid

or they wanted to build up their comp time and then take it off. The way this reads, the department head can really utilize this to give someone a week, 10 days or a month off if they owed it to them for working.

Ms. Lamberton responded first of all, this ordinance limits the amount of compensatory time that can be accrued to 80 hours. That is two weeks.

Alderman Garrity moved that the ordinances ought to pass. Alderman Pinard duly seconded the motion. Chairman Duval called for a vote. The motion carried with Alderman Lopez being duly recorded in opposition.

Alderman Lopez asked don't we have another item on Item 5.

Chairman Duval answered we just passed all of them. The motion was for the ordinances contained in Item 5 to pass.

TABLED ITEMS

6. Ordinance:

“Amending the Zoning Ordinance of the City of Manchester by establishing the Lake Massabesic Protection Overlay District (LMPOD) to protect the Lake Massabesic drinking water supply in the City of Manchester.”

On motion of Alderman Garrity, duly seconded by Alderman Pinard it was voted to remove Item 6 from the table.

Chairman Duval called Mr. MacKenzie forward to give a quick update. Following that I will seek additional public input.

Robert MacKenzie, Planning Director, stated just to kind of summarize where we have gone since the public hearing, we did sit down with Tom Bowen, the Water Works Director to kind of hash out some of the issues. I know I also met with Alderman Pinard. We actually went out and talked to a couple of the property owners that could be effected. Mr. Bowen and I did come to some conclusion on possible changes. We actually have four changes that we would be recommending to you now. They are contained in my letter, which was dated September 15 and if I could just go over those four changes with you. The first one I had actually mentioned at the public hearing. We are proposing that the phrase “...or septic systems” be removed from this particular ordinance. Septic systems are regulated through various other Health Department regulations, as well as zoning regulations and are appropriately covered under those, I believe. So we are

eliminating that from this overlay ordinance. The second one is there was some concern about the setback from wetlands and water bodies, particularly on smaller lots. We would be proposing that lots under 12,500 square feet would be exempt from that particular setback. Now there are already requirements for setbacks from wetlands. This was the additional...this was a 50' total setback from wetlands and water bodies. So we are suggesting that on small lots they would be exempt from the setback and that applies only to residential, not commercial lots. The third change was basically eliminating...there were 20 items that were proposed to be prohibited. Mr. Bowen and I kind of went through all of those. Eleven were items that are not good for the watershed but are currently not permitted anyway. So those 11 as outlined in my letter would not be included in this ordinance. So there would be only 9 items that would be prohibited under this overlay district. The last item change is more an item to make the Water Works feel more comfortable with those other changes in that right now an applicant can go to the Zoning Board of Adjustment and get something like an oil change facility approved by them. They did ask that they at least be notified of any variance request for non-commercial property within the watershed district so they can at least evaluate the proposal and go to the Zoning Board of Adjustment and explain any concerns that they have with it. So at least they would be notified in the case where the Zoning Board of Adjustment might be wanting to grant a variance within the watershed. I would also note that you may not have seen it in the package but I did get a copy of a letter through Mr. Bowen from the State of NH basically indicating that the type of limitations that are proposed in this ordinance are consistent with model protection of water supplies both in NH and nationally as part of the Environmental Protection Agency recommendations for protecting water supplies. So these are not unusual regulations for protecting water sources. At this point I would be happy to answer any questions of the Committee. I know that Mr. Bowen is here as well.

Chairman Duval asked in your opinion...I know that at the public hearing held on this matter there were a great number of remarks made towards the concern over the possible decrease of property value - those property owners that had certain plans in play, and those with substantial financial consequences at stake. Do you think the changes that you have come to terms with or worked out with Mr. Bowen...do you think they address some of those concerns?

Mr. MacKenzie answered they may address some of those concerns a little bit but for certain property owners there will still be some concerns. My only comment on that is there are still 63 different commercial uses that will be allowed in that area. So this ordinance is prohibiting 9 but there are still 63 commercial uses that will be permitted. Secondly, any uses that exist now become non-conforming. They can continue in perpetuity. In fact, they can still be expanded if those people so choose. Having said that though, ultimately there may be certain uses that

some of the property owners wanted that they may not be able to get. So there may be some diminution in value. I think it is the Board's kind of difficult decision to say okay if you have a handful of properties that could potentially have a diminution of what they had hoped to be someday, because it will not change what they do now and it will not affect their current businesses, that has to be weighed against the protection of the water supply that provides affordable water for the City and surrounding towns. That is...this is a classic case of zoning where you do have to provide some limits on property uses in order to protect everybody's water supply.

Chairman Duval asked should one of these property owners make application to expand their operation and it is one of these prohibited areas, can they seek a public hearing from the ZBA or do they go to the Building Department.

Mr. MacKenzie answered actually the zoning ordinance allows them to expand so if you had an auto dealership now that was selling used cars the zoning ordinance says you can expand up to 25%. Beyond that, they can go to the Zoning Board of Adjustment. There is a public hearing and they do have the opportunity to get a variance to do what they want to do. So there is an avenue for property owners. If there is a hardship on the property and they do need relief from the ordinance, they can go to that process.

Alderman Pinard stated Bob you and I and Mr. Bowen have discussed this and I have lived in that area for 40 years and the Christie family has been there and so has Frank for 20+ years probably. Knowing the area and let's start with Candia Road. There are only one or two vacant lots and I think one of them is owned by the Christie family. Mr. Purdy probably has the biggest parcel of land in that area. Rumblings were that we didn't want another South Willow Street. Well there is no way in my lifetime that you will ever see Candia Road turn into another South Willow Street. If you go down on Bypass 28 you are in Auburn and on the other side you are in Hooksett so there is not much there that can be done because we have the only parcel that was left for general use and it is going to be a Dunkin Donuts. Going to Lake Shore Road, the biggest part of Lake Shore Road is owned by Water Works as it is. I don't want to criticize because I want to protect the water supply as much as I want to protect the residents in that area. Now Lake Shore Road again probably $\frac{3}{4}$ of Lake Shore Road is owned by Water Works. You have two farms there and those are probably the only parcels large enough for any development. If anything, if those people want to sell it I think Water Works would have first dibs on it and it would be a residential area. So all of these restrictions that you are putting on there I think...they are well put together but I don't think you need that many restrictions because you don't have that many parcels of land available. I might be wrong, Mr. MacKenzie, but again I think that some of it is great and I agree with but I don't see...in my mind I don't see why all

of this stuff is coming into play because you don't have that many parcels available for the outside world.

Mr. MacKenzie responded the City will hopefully be around in 100 years. Our water supply potentially might expand by tapping into the Merrimack River. This is our main water supply and 100 years from now we have to make sure it is still good. In terms of economic development, an adequate and healthy source of public water is one of the critical elements that companies look for when they come to expand or locate to a new area. So good water supply is absolutely critical. I recognize that there are only a few more development parcels left in this area but we also have to look at the parts of Auburn, Chester and Hooksett because it is going to be important for Manchester Water Works to go to those places to make sure that our water supply is protected. Unless the City takes some action to protect its watershed, I don't see other towns adopting the same type of regulations and those have hundreds or perhaps thousands of vacant parcels that could be developed. So that perhaps is a lot more important – the areas in Hooksett, Auburn and Chester than just the portion in Manchester.

Alderman Lopez stated on the Massabesic Lake we talk about all of these restrictions on oil, gas stations and septic tanks. Are we saying no more septic tanks will be allowed?

Mr. MacKenzie responded no we are not saying that. The septic provisions are basically being eliminated from this proposal.

Alderman Lopez asked are we also saying that somebody that doesn't qualify for something here that they would have the right to go for a variance.

Mr. MacKenzie replied that is correct.

Alderman Lopez asked if we are going to correct our water supply and Mr. Bowen can probably answer this question better but what is on the lake. Do we allow motor boats? Is there any pollution from that?

Thomas Bowen, Water Works Director, stated yes motor boats are allowed on the lake. There was some discussion of this at the public hearing I believe. I threw out a number or a percent as to the percent of use of motor boats on the lake versus sailboats. Lake Massabesic predominantly is used by sailboats. There are a number of motor boats but it is not your typical lake where there are a lot of day boats out there except on the weekends. The thing with the oils from the motor boats...two items. One, we have restrictions as to where those boats can travel. Primarily there is no use of motor boating on Lake Massabesic on the Manchester side of the lake. So in the proximity to where our intakes are there is no boating.

The problem with this commercial zone is this commercial zone is in close proximity – this B2 zone and around the traffic circle, is in close proximity to the lake and it is in Manchester. The other item with the gasoline is the gasoline that floats on the lake primarily in the summer months is very susceptible to being burned off by the sunlight as opposed to gasoline that is in the ground water that is there and polluting the lake for 12 months. It is customary, as Bob mentioned that these types of exclusions and restrictions are part of model ordinances that are being adopted across the country for drinking water reservoirs.

Alderman Lopez asked how long have you been in the process of bringing something like this to us.

Mr. Bowen answered we began working on it I believe about a year and a half ago with a small grant that we received from the NH Department of Environmental Services. There were a number of iterations of this as we went back and forth. We had a group of people that included Planning, Building, NH DES, a consultant, and a couple of contractors who were involved from time to time and then there were modifications made as we tried to...it started out that it was a much more complex document and it would have taken us four hours to explain it. I had a hard time understanding it myself. We tried to simplify it so that it was straightforward and easy to implement and easy to conceive so that there wouldn't be a lot of second-guessing and people would understand exactly where the limits were.

Alderman Lopez stated I wasn't here in August because I had to go to a wedding but have we satisfied all of the concerns from that hearing. I understand that it was quite a hearing to a degree and people were upset.

Mr. Bowen responded I think from the general public there were two things that raised a lot of issues. One was the issue of the septic tank and even though Bob mentioned it early on in the meeting, I think there was a lot of misunderstanding about it. Some people thought that we were prohibiting septic tanks within the watershed and that wasn't our intent. We noticed during the review that septic tanks are covered elsewhere in the ordinance so we said all right we will just remove it from this section and it is covered elsewhere and it is adequately covered. The other item that was of concern to some constituents was the impervious surfaces. People were concerned about not being able to pave their driveway. I think we went back after the meeting and actually reviewed the comments of those people and in all but one case everybody that had a concern had no wetlands on their property so they obviously could go ahead and pave their driveway if they so desired. It is not a requirement obviously. The other thing that we did was to eliminate those small lots from consideration here so if someone had a very small lot and they did have wetlands on their property they

would not be impacted by the 50' setback. They would be covered by the current language in the ordinance, which says 25' I believe. So if someone has a very small lot and they have some wetlands they still will be able to do what they would have been able to do before this requirement.

Alderman Lopez asked would it be a fair statement that nobody in the area is being denied no more than I am denied on the West Side to do anything, other than the restrictions.

Mr. Bowen answered I don't think there is really much impact on residential customers by the language here. I would want to clarify one statement that Bob made. The fourth item that we are adding in the language is language that would require the Water Works Department to be notified if there were non-residential...I think Bob said non-commercial so any non-residential variance in the watershed we would be notified. For example, there was a lot of discussion at the meeting with regard to what entailed a contractor's yard. The best example that anyone could come up with at the meeting was well if someone were storing bark mulch and selling bark mulch and had landscaping supplies and so forth that would be considered a contractor's yard. Well a contractor's yard...we are not concerned about a contractor's yard either. Those are natural materials that are there in the watershed anyway but the item that we are concerned about, which also fits into that category and we found this out from talking to the Building Department afterwards, is a junkyard. That also fits into that category. That is where the requirements are for citing a junkyard in the City. Well we certainly don't want a junkyard in the watershed with batteries leaking and anti-freeze leaking and so forth all over the place. So this language that we are proposing would give us the ability if someone wanted to cite a junkyard within the watershed to be notified so that we could go and present our case. It is not going to automatically exclude it but it requires a zoning variance anyway so that will give us the opportunity to go and explain why we don't want that in the watershed. Hopefully it will be obvious but that is another item for another day.

Alderman Garrity asked Tom do you have any timeline of when you are going to be going to the towns of Hooksett, Auburn and Chester and is Derry involved in that too.

Mr. Bowen answered no Derry is not part of our watershed. We are going to be going immediately. We talked with the state and put together kind of a strategy for doing this and I think early on it was everyone's perception that we would have a very difficult time talking to Auburn or Hooksett if Manchester, for example, did not have restrictions in place that were similar. Now each one of the towns is going to have to be treated differently. For example, the residential areas. Hooksett and Auburn in the watershed area have lot size requirements that are

much larger than what Manchester's are. There are no 12,500 square foot lots in the Town of Auburn. They are all 1.5 acres I believe. So some of those provisions that would have been in place in Manchester just aren't going to be applicable.

Chairman Duval asked Mr. MacKenzie did you have something to add. I noticed you were reaching for the microphone.

Mr. MacKenzie stated I did just want to respond a little bit to Alderman Lopez's question as to whether everybody was happy. There were 1,800 property owners in this area. We notified them all. We will not make all of those 1,800 people happy. There are still situations where I suspect there are property owners that are not happy with this, although I do want to mention that at the public hearing if you actually check the minutes a majority of the people felt that it was important to protect the water quality of Lake Massabesic. So it was not necessarily that people were unanimously opposed to these type of regulations. They had a lot of questions but a majority still felt that it was important to protect our water supply.

Chairman Duval stated I know there was already a public hearing on this matter but it is very significant and I want to make sure that we have addressed all of the items as thoroughly as possible and given ample opportunity to the public to have input. Consequently I would like to ask the Committee to grant an additional public session tonight whereby anybody wishing to speak in favor or in opposition has two minutes to have further input providing that they speak on point and within that two minute constraint.

On motion of Alderman Pinard, duly seconded by Alderman Garrity, it was voted to allow public comment on this issue.

Chairman Duval asked for those wishing to speak in favor of the proposed overlay.

Vince McHugh, 2076 Lake Shore Road, Manchester stated:

I live across from Massabesic Lake on the corner of Candia and Lake Shore. I just had two concerns that I was hoping to get some clarification on and maybe to bring up as a point. The land next door to me is currently being used as a contractor's yard for the Candia Road construction. Will this have any effect on the use of that land being used by heavy equipment especially them working on the equipment while it is parked there?

Chairman Duval stated what I would like to do is if the appropriate department head would make note of the question and then respond to the gentleman because

we are not dealing with a large crowd tonight so we can do that. Was there a follow-up question you had Mr. McHugh?

Mr. McHugh responded yes. I have two other things. That particular land is now owned by Hazelton Company, which owns a heavy duty equipment sales company just up the street that connects to their land in the back. Currently it is zoned R-1A. Will they be allowed to expand into that land once this project is over or will it prohibit that? Finally, the spirit of protecting the water...it's more of a statement but the spirit of protecting the water I think is the essence of this proposal. I brought up at the last meeting that there is currently an unnatural run-off condition causing water to run through my septic system into our lake and I would like somebody at Water Works to address that.

Chairman Duval stated Mr. McHugh thank you for taking the time to come up tonight. Is there anybody else wishing to speak in favor?

There were none.

Chairman Duval asked is there anybody wishing to speak in opposition.

Mel Christie, 2180 Candia Road, Manchester stated:

I am in opposition to the way the proposal is written even with the few changes that have been made but I am definitely in favor, like anybody here, of maintaining the quality of our water supply. I had a few questions that I wanted to direct to Tom Bowen but I kind of got sidetracked by a comment that was made earlier. It was basically that there are no concerns regarding the boat situation on Lake Massabesic. Are there any present adverse impacts on our lake right now that anybody is aware of? To my knowledge there isn't and what is strange is that we are proposing restrictions on a future concern yet there is no future concern on any changes to the number of boats on our lake, which seems a little contradictory. As far as the history of our particular area, prior to the updating to our water treatment facility our neighborhood met on several occasions to get City sewage to our area. We included in the Mayor, the Aldermen and the Water Works Department. Back then there was one more gas station and again my property is right at the traffic circle – a restaurant, a dog kennel, an animal hospital that are no longer there today. Let me point out that the dog kennel was where the car wash now stands and believe me the car wash is an improvement over the dog feces that would be washed down to the storm sewer, which empties directly into our drinking supply. Where the restaurant once was is now a retail gift shop, Day Spa and the gas station at that time was leaking fuel and is now for repairs only. It seems our uses today are an improvement over the past. Practically every commercial property owner in my zoning district has had his or her property for many, many years. We have all waited for the day that City sewage would reach

our area. Now with its soon arrival we want to take away uses that our City's founding fathers had granted to us 30 years ago? Now this is without any concrete evidence of danger to our lake. We want to diminish our property values with just one stroke of the pen. It just doesn't seem fair. The bottom line is for over 30 years giving us City sewage meant paying out and increasing the budget. Now the water supply is a concern but yet never before and with a proposal to reduce all commercial property values at no cost to Water Works is a great idea? Let's face it, if City sewage was not being put in the idea would never have surfaced because the entire neighborhood would have been up in arms saying why not give us City sewage. Obviously E-coli is the number one concern. It is not gasoline or oil, it is E-coli but yet we have never had issues, according to Water Works, with the quality of our water in the past, which once again has been more detrimental as far as E-coli content than it has or is today. Lastly, let's review some of what Water Works has done over the years to impact our water supply. They have cut down and developed the wooded area directly across from the lake, which once had only once baseball field and increased it to a grand total of four with an additional small practice field. That is not to mention the clearing of more land for two huge unpaved parking areas, again directly across the street from our drinking supply yet our commercial area has never expanded. Oh, and about five years ago a few "No Trespassing" signs were posted to protect our lake. Now I do understand that it is not reasonable to ask Water Works to place a huge fence around our lake nor is it fair for them to reduce the property values of our land that people like myself have owned for two generations. Members of the Board, in essence I implore you to set guidelines with our existing permitted uses to protect our water. That can be done. No one is here to dispute the quality of our water or the importance of maintaining the quality of our water. I am just suggesting that we set guidelines again just to protect our water, not to issue restrictions preventing uses. Thank you very much.

Chairman Duval asked if there was anyone else wishing to speak in opposition.

Paul Porter, former Ward 6 Aldermen, stated:

I certainly can't consider myself opposed. I think I am somewhere in between. In dealing with the people on Candia Road I think everyone is interested in maintaining and I think Water Works is to be commended for wanting to maintain a natural, God given resource to the City of Manchester. Nobody would ever be opposed to that. I think, however, that we are dealing with the good of the many possibly versus the rights of an individual and I think that whenever you make a change in zoning or place restrictions a number of things happen. There are properties out there whose market value will be decreased by the restrictions and I think one way of handling this is before you approve the ordinance change or the restrictions as written it may be incumbent upon the property owner to have a before and after appraisal done and treated as if there were damages. Now if this

were a condemnation and the City were taking it through eminent domain you would have to go through this type of procedure and I think by changing the zoning or imposing these restrictions it would definitely impact the value of probably not a lot of the properties but there may be a few out there that would be impacted. I think as I said before that before you do go ahead and approve this as written there should be some way of addressing the potential financial loss to individuals who will be affected by these changes.

Alderman Lopez asked when you say financial change are you indicating the number of businesses out there...is that every business out there that would have a financial loss by these restrictions.

Mr. Porter answered I don't know how many there would be Alderman but I believe there would be some. I think the size of most parcels would preclude them from being able to claim that it would be a hardship, meaning a financial hardship, with these restrictions imposed. I just think that it would be an opportunity for people to be able to demonstrate that they, in fact, would be financially impacted negatively through the appraisal process.

Alderman Lopez asked and your experience as a former Assessor, do you truly believe that if something is valued under...right now let's say \$200,000 a person could claim that he couldn't expand and all of that because you put a hardship on it.

Mr. Porter answered I think they can't just make a claim but they would certainly have to demonstrate it and there are professional appraisers who are fully able to do this. I think before...as I said my main objective is before you approve this take that into consideration and find some way of addressing those problems. We certainly all want clean water. It would be foolish...I can't imagine anybody not wanting that including all of the people out there but there are a number of people out there who have struggled for the past many, many decades and Alderman Pinard knows first hand not only the condition of the road that has deteriorated over the years but then through the construction period. I am sure a number of these people held onto the property with the prospect that gee when everything is done they are going to have the dry sewer in and eventually have the full sewer and my property value will go up and then along comes a well intended proposal, no question about it...as I said Water Works is to be commended for doing everything they can to protect our water supply. I do think that there would be some individuals negatively impacted financially and before anything is done this should be addressed.

Chairman Duval asked if there were any other comments.

Clifford Harris, Prudential-Verani, stated:

I represent Frank Purdy. Frank currently owns the addresses of 2140, 2150 and 2170. A couple of things have been bantered back and forth and what I have here would take me longer than two minutes but I have quite a few pictures that will demonstrate the oil spills that are currently in that area on the land. Some are at the boat launch area and some are over across the park at the baseball field. These areas have yet to be addressed in this whole process. We talked about boats and boats only being out there on the weekends. One thing we haven't mentioned about the boats is the motors – the inboard and outboard motors. You talk to some of the guys who are out in that area who don't know the lake that well and they talk about their boats hitting the rocks on the bottom of the water. Therefore, if they are hitting it they are breaking their seals and breaking the seals causes gear oil to fall to the bottom of the lake. Gear oil of course being the heaviest doesn't really float and can't be separated that easily. We have yet to address boats being on Lake Massabesic. That is a major concern. If we are going to talk about protecting the water, let's start with the boats. Secondly, if we go through this we are talking about 180 letters that went out. There is less than 10% of that number...I am sorry 1,800 letters that went out to that area and less than 10% of that represent the commercial market. So we are penalizing...the largest part of this whole overlay penalizes less than the 10% group that is in there...the businesses. We talked about what businesses would be allowed in that general area – mini golf. I am sorry to say but some of the businesses that they are allowing in that area aren't the highest and best use for that property. Therefore, the highest and best use as mentioned before should be considered as far as what are we doing to the property value in that area. We talk about...also a contradictory thing you would find between the letter that recently went out from Mr. MacKenzie was relating to the fact that they will allow equipment rental and leasing. The question I have for them in that respect that is kind of unclear is what is equipment rental and leasing? Is equipment rental and leasing cars? Is it lawnmowers? What does that entail? Does it entail things that have gas and oil involved with them? It is not too clear. What they are not allowing in that area is the sale and rental of motor vehicles or repair of boats or automotive repair yet they are allowing equipment rental and leasing. I am somewhat confused as to what they are allowing and what they are not allowing by reading what he has asked for. I think if you look at the pictures you will notice the boat launch area. A lot of the cars are still driving up and down that area to launch their boats. You will see in more pictures that I have over here as well how the streets are lined with cars to get into Lake Massabesic or get into the ballpark yet we are not looking at the cars that are dripping their oil and anti-freeze onto the ground to enjoy the ballpark or to enjoy Lake Massabesic. I guess to summarize to make sure that I think I have covered all of the points here is that less than 10% of this area...let me back up a little bit. We yet to talk about pesticides and oil in all of the residential areas. All of the residential areas are going to use pesticides. They

are all going to use some form of lawn care. They are all most likely going to do some kind of oil change...not all but some will do oil changes. What do they do with that oil? Where does that oil go? They use salt in their driveway or they are going to have transmission fluid or anti-freeze in their driveway. That is 1,700 residential locations yet we are focusing on less than 10% of that as far as penalizing in this overlay. I guess I am somewhat confused. We are really trying to protect it but I think the businesses in this area have been restricted and know how to protect the water area. One thing that is mentioned in the letter is that they were going to give us documentation of cases that currently exist of contaminating the water in the Lake Massabesic area. I have yet to see that documentation. I have asked for that documentation. I have not seen it. They are saying that there are gas stations that are currently leaking. I don't see that documentation. I go to the gas stations and ask the owners and they say no it is not occurring. They have to prove to the EPA that they are clean. I have not seen that documentation. My question is there is no proof that the businesses in that area are contaminating Lake Massabesic but yet we are penalizing the businesses. That's it. Thank you very much.

Andrew Bow, 154 Fox Hollow Way, Manchester stated:

I do not live in the proposed overlay district and do not own any property there. I am just speaking as a resident of Manchester and a water user. I am confused as to the importance of this overlay district as worded. There are already many federal and state environmental laws on the books, including the federal Clean Water Act. Pollution and contamination from any source is already illegal so you really don't have to prohibit certain businesses. If any business does it, it is illegal. Also, a very dangerous source of pollution – motor boating and snowmobiling – is not really addressed in this overlay. This should not be diminished. We are told that gasoline on water evaporates. This is only half the truth. What about the toxic components and additives in the gasoline? We know what happened to MTBE that has contaminated much of our groundwater. That did not evaporate. That is a real concern. Some bacteria can be easily treated but the toxic chemicals in the water, not too easily. Those are my concerns. Thank you.

Alderman Lopez stated I am just wondering if there were some comments made here that we haven't had input like from the best and highest use...maybe Mr. MacKenzie can address that or do we need to get somebody else or get the property evaluated. Can we get a viewpoint from the Assessors? I am just a little confused in the sense that some good points have been brought out here. I guess maybe the fair question to Mr. Bowen is this has gone on a long time and I think it is important where you have a lot of authority under federal guidelines and under the state to step in if something is going to endanger our water supply. You always have and you have always protected it. I guess the fair question would be what has changed that you see that restricts what has been presented here?

Mr. Bowen responded the regulations that are currently in place for protection of the watershed are regulations that are 1) either strictly for land owned by Manchester Water Works of which there is no question considerable amounts along the shore of the lake, and 2) under the jurisdiction of the NH Department of Environmental Services operating our administrative rules. Those rules, however, do not touch uses of property. The state in promulgating those rules does not have the authority to say, for example, that the City of Manchester cannot cite a junkyard within the watershed. I am sure if there was such a request made that there would be other regulations that may have to take place. There would have to be monitoring wells indicated here, there and wherever. There would have to be special drainage and run off provisions placed but the state in that regard does not have the jurisdiction. The zoning issues fall with the City of Manchester. What has changed from our perspective is that the Water Works Department in the 20's and 30's was in a mode to go out and buy a lot of land and they did go out and buy a lot of land for the protection of the watershed. That is no longer possible. We are not looking at taking by eminent domain properties that are located out there but our concern is that with the soon to be constructed Candia Road and the widening and with sewer being readily available that there is going to be a lot of pressure put onto the City to expand the uses within that district. There have already been new uses put out there. Now granted some of them have been marginal but some of them have been less than desirable from our perspective. There are two new gas stations that are located within that district within the last three or four years. There are two gas stations at the corner of Wellington Road and we have had leaks. We have had surface leaks and we have had groundwater leaks. Right now Water Works has a number of monitoring wells, which have been placed on our property in the area behind Sandy's Variety that are monitoring leaking groundwater problems and leaking gasoline from a previous leak that has been fixed but nonetheless that leakage is migrating towards the lake. One of the two stations at the corner of Wellington Road had a problem. I don't know which one it was but we have monitoring wells on our property behind those stations. There have been leaks that have occurred and what we are trying to do is minimize the impact that those are going to have by...how many gas stations do we need out there and every time we add another gas station we add another potential problem or potential possibility of a leak, whether it is a major leak or a small leak. Even a monitored tank can leak vast quantities of gasoline before it is detected even if there are good maintenance procedures in place.

Alderman Lopez stated I guess there are procedures though when you find something wrong correct.

Mr. Bowen responded there are but that is after the fact. That is after the leakage has occurred.

Alderman Pinard stated Tom there has been a lot of discussion about regulations around Lake Massabesic. I think we all know that you have your own security people that monitor the lake. Do they look for people doing things they shouldn't be doing around the lake and do they find them? We never hear about the Water Works guards. I do a lot of work with those guards and they are good. Can you tell us what they do and do they fine people?

Mr. Bowen responded yes they do and they have arrest authorities but the primary function for our patrol people is education. That is the thing that we stress with them. We would rather have them out there explaining to people why they can't do something than arresting them the first time they see it. Now if someone is out there and they are repeatedly or they absolutely refuse then the patrolmen do have arrest authorities. They do issue summonses for violations.

Alderman Pinard asked do they ever catch anybody changing their oil in the front parking lot.

Mr. Bowen answered not that I know of. Those points were mentioned by comments from people that were opposed to the regulations but those types of things are covered in other regulations. They are covered in other sections of either the City ordinance or our operating rules and regulations or they are covered in NH DES regulations. Those aren't going to go away and we are going to continue to enforce them. What we are trying to do is we are looking at zoning as a zoning issue. The issue of someone using salt on their driveway or putting fertilizer on their lawn is not a zoning type of issue. Those regulations are covered in setbacks and that is one of the reasons why we wanted the impervious surfaces more than 50' back because that gives them an opportunity - the salt and pesticides - an opportunity to be absorbed before they get into the water.

Alderman Lopez asked Mr. MacKenzie is there any provision or need for a provision for the businesses to be grandfathered in.

Mr. MacKenzie answered no there is no need for provisions because they are grandfathered as part of the zoning ordinance. The businesses they have now will not be effected. They can continue in perpetuity and they can even expand somewhat under the zoning ordinance.

Chairman Duval stated this has been looked at for an awfully long time and it certainly was given ample opportunity for public input. Not to prevent additional input but at some point we do have to trust in the material that has been presented and the research that has been conducted and the wisdom of our department head, Mr. Bowen in conjunction with Mr. MacKenzie. Perhaps a slight delay might be

in order but I think I have certainly had enough evidence presented to me to make a decision tonight but if the Committee desires we can postpone.

Alderman Pinard moved that the ordinance ought to pass.

Deputy City Clerk Johnson stated the Clerk would advise that if he is wishing to move that forward the first motion should be a motion to amend the ordinance to what Mr. MacKenzie has presented to you.

Alderman Pinard moved to amend the ordinance in accordance to what was presented by Mr. MacKenzie. Alderman Garrity duly seconded the motion.

Chairman Duval stated before we cast a vote, just one more comment and this is directed to Mr. Bowen. I think it is interesting that at the public hearing that was held and again tonight there is a public perception relative to this whole issue with boats on Massabesic Lake. I think that has been made loud and clear at least to this member. It may not even present a serious threat today but I think there is a serious perception problem. It is kind of interesting that you can't put your big tell in the water but you can have a boat out in the water polluting it with gasoline and everything else that goes along with that. I would ask for a report back to this Committee and every member of the Board with regard to that issue so that when we get asked by constituents we can respond with some knowledge. Was it ever considered that the City take a position on that and disallow it?

Mr. Bowen responded the jurisdiction for use on the lake itself is with the NH Department of Environmental Services. So while Manchester Water Works is the guardian of the land, the state actually owns the body of water itself and the State of NH controls the uses on the lake itself.

Chairman Duval asked can the City take a position.

Mr. Bowen answered sure and Water Works has taken positions in the past. We are kind of walking a fine line sometimes between the competing uses on the watershed. This is one that we have had many internal debates about. One of the concerns that we have had of late that has been taken care of by new regulations is one that one of the speakers brought up and that is the MTBE issue. Manchester Water Works, through a lot of work with NH DES and the legislative body was very active in trying to push forward the requirements to eliminate the MTBE's. We had a couple of people who spent several days up at the Legislature the last couple of sessions lobbying for them to prohibit the use of MTBE's. While it was only a very minor level of contamination, we are not promoting anything that is going to contaminate the lake or the resources.

Chairman Duval stated Mr. Bowen if at some point you conclude that it is your recommendation that boating be eliminated on that lake and you need this Board to take a position on that then I suggest you consider that because I certainly would seriously consider supporting that prohibition.

Alderman Lopez stated I am concerned about the commercial value and the tax base and everything. We just went through a complete revaluation and I would like to have the Assessors look at this and see if there is a potential for people to get abatements because of restrictions in this ordinance.

Chairman Duval asked the City Clerk to inform the Assessors that the Committee wants that done.

Chairman Duval called for a vote on the motion to amend the ordinance. There being none opposed, the motion carried.

On motion of Alderman Pinard, duly seconded by Alderman Garrity it was voted that the ordinance, as amended, ought to pass.

Alderman Lopez stated I want to note that I will go along with this as long as I get the report from the Assessors at the full Board meeting.

Mr. Harris stated I just want to make note of one thing. He mentioned the 1,800 letters that went out. Yes those 1,800 letters went out for the initial notification. There was no notification after that about this public hearing. No one has known about this public hearing unless they came that night and put their name on the list and then they were notified about this public hearing. Out of all of those businesses, nobody was notified unless they came that first night. Unfortunately I think it is unfair that those business owners were not notified about tonight's hearing. Again we are speaking about less than 180 businesses that could have been notified.

Deputy City Clerk Johnson stated the Clerk just wants to note for the record that this does not constitute a public hearing. It is a Committee meeting.

Chairman Duval stated if I am not mistaken the idea to allow further input was at the discretion of the Chairman and recommended or suggested by Mayor Guinta because he wanted to allow further opportunity for public input and I believe that is why it was granted correct.

Deputy City Clerk Johnson replied that is correct.

Chairman Duval stated I think for Item 7 we are awaiting additional information.

Deputy City Clerk Johnson responded it is on the table. You did not remove it from the table. The communication you received was to leave it on the table.

7. Ordinance:

“Amending the Zoning Ordinance of the City of Manchester by establishing the Manchester Landfill Groundwater Management Zone (ML-GMZ) Overlay District to monitor groundwater quality in the vicinity of Dunbarton Road and Front Street.”

This item remained on the table.

8. Ordinance:

“Amending the Zoning Ordinance of the City of Manchester by adding language to Article 10.09B 2 regarding the use of front yard areas for parking in residential districts.”

This item remained on the table.

9. Ordinance:

“Amending the Zoning Ordinance of the City of Manchester by adding language to 5.11 Table of Accessory Uses regarding the storage of unregistered automobiles.”

This item remained on the table.

10. Ordinance:

“Amending the Building Code of the City of Manchester as adopted in Section 151.01 of the City of Manchester Code of Ordinances by repealing the 1999 National Electrical Code and adopting the 2005 edition of the National Electrical Code; by repealing the 1993 BOCA National Plumbing Code and adopting the 2000 edition of the International Plumbing Code as amended by the State of NH Board of Licensing and Regulation of Plumbers and with further amendments contained herein.”

This ordinance remained on the table.

11. Ordinance:

“Amending Chapter 1 Administration of the Building Code of the City of Manchester providing for increased fees.”

This item remained on the table.

12. Ordinance:

“Amending Chapter 150 Housing Code, Subsection 150.114 and Chapter 155 Zoning Code, Subsection 155.02 of the Code of Ordinances of the City of Manchester by providing for increased fees.”

This item remained on the table.

There being no further business, on motion of Alderman Lopez, duly seconded by Alderman Pinard it was voted to adjourn.

A True Record. Attest.

Clerk of Committee